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FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of

CCB/CPD 01-12

Petition for Rulemaking Regarding  
Presubscribed Interexchange Carrier Charges

RM No.10131

COMMENTS OF THE  
ASSOCIATION OF COMMUNICATIONS ENTERPRISES  
IN SUPPORT OF  
PETITION FOR RULEMAKING

The Association of Communications Enterprises ("ASCENT"),<sup>1</sup> through undersigned counsel, hereby offers the following comments in support of the petition for rulemaking filed in the above-referenced proceeding (the "Petition"). In the Petition, the Competitive Telecommunications Association ("CompTel") urges the Commission to "initiate a rulemaking proceeding to revise its policies governing the federally-tariffed charges of incumbent local exchange carriers ('ILECs') for changing the presubscribed interexchange carrier ('PIC') for end-user subscribers."<sup>2</sup> ASCENT agrees with CompTel that, in light of the "precipitous decline" in the cost of processing PIC changes since the mid-1980s, it is inappropriate and inherently anticompetitive for incumbent local exchange

<sup>1</sup> Formerly the Telecommunications Resellers Association ("TRA"), ASCENT is a national trade association comprised of more than 800 entities engaged in, or providing products and/or services in support of, the competitive provision of telecommunications and information services. ASCENT was created, and carries a continuing mandate, to foster and promote the competitive provision of telecommunications and information services, to support the competitive communications industry, and to protect and further the interests of entities engaged in the competitive provision of telecommunications and information services. ASCENT is the largest association of competitive carriers in the United States, numbering among its members not only the large majority of providers of domestic interexchange and international services, but the majority of competitive local exchange carriers, as well.

<sup>2</sup> Petition, p. 1.

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carriers ("LECs") to routinely assess upon competing carriers a PIC change charge which far exceeds the incumbents' actual costs.

Ample evidence exists as to the lack of correlation between actual costs associated with PIC charges for incumbent LECs and the Commission has recognized the very real potential for such carriers to utilize above-cost PICCs to the competitive detriment of competing carriers in states where Section 271 relief has been granted. Because no economic or business justification exists for retaining a non-cost based \$5.00 ceiling, and especially in light of the significant competitive risk which accompanies imposition of this non-cost-based charge, ASCENT joins CompTel in urging the Commission to eliminate the \$5.00 PICC safe harbor with respect to incumbent LECs.

As CompTel notes, the present \$5.00 "safe harbor" PICC which incumbent LECs are presently permitted to impose upon consumers or competing carriers had its origins in the incumbents' initial post-divestiture access tariffs in the mid-1980s. That \$5.00 ceiling, rather than a strict cost-based recovery structure, was permitted by the Commission under its 1984 Access Charge Order and 1987 Access Tariff Order ostensibly because at that time, the development of a cost-based charge would have "present[ed] a difficult challenge for the carriers."<sup>3</sup> This is no longer the case. After fifteen years of experience, precise costs associated

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<sup>3</sup> MCI Telecommunications Corporation v. U S West Communications, Inc., et al., (Memorandum Opinion and Order), 15 FCC Rcd. 9328, ¶ 9 (2000). And subsequent to the enactment of the Telecommunications Act, with its fundamental purpose of ensuring the promotion of "increased competition in telecommunications markets that are already open to competition, including the long distance services market" (Local Competition First Report and Order, First Report and Order, 11 FCC Rcd. 15499, ¶ 3, (1996)), neither can the Commission's alternate ground for not requiring a cost-based charge *ab initio*, "to discourage excessive amounts of shifting back and forth between or among interexchange carriers" (1984 Access Charge Order, Appendix B, 13-5) survive as a supportable justification for an above-cost recovery scheme. Consumers are now assured of their ability to choose carriers freely – and if they desire, repeatedly. An above-cost PICC discourages full exercise of this consumer right.

with implementing PIC changes can now be easily documented. And based upon the Commission's own findings, incumbent LECs have realized "'substantial cost savings' from the automation of their PIC-change processes over the past fifteen years."<sup>4</sup> Indeed, the Commission has noted that

At the time the Commission approved the \$5 PIC-change rate in 1984, most PIC-change requests initiated by IXC's were required to be either faxed or mailed to the defendants and were processed on an individual request basis, typically requiring up to two weeks to complete. MCI's witnesses persuasively demonstrate that the defendants now deploy automated systems permitting them to process PIC changes virtually instantaneously with on-line requests from the IXC's that require little or no manual labor from the LECs. In fact, with respect to one defendant, Bell Atlantic, MCI produced direct evidence indicating that Bell Atlantic's actual PIC-change costs are significantly less than \$5.<sup>5</sup>

. . .

Defendants . . . assert that the automation has not resulted in 'cheaper' service . . . . We find defendants' assertions in this regard to be unsupported in the record. Based on the record before us, we are satisfied that the defendant LECs have, in fact, realized substantial cost savings from the automation of their PIC-change processes over the past fifteen years.<sup>6</sup>

The Commission has also expressed concern that absent a cost-based PIC charge requirement, an incumbent LEC which obtains authority to offer in-region long distance service pursuant to Section 271 of the Telecommunications Act<sup>7</sup> would be well positioned to obtain "a competitive advantage over non-local exchange carrier providers of long distance service" by

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<sup>4</sup> Petition, p. 2, (citing MCI Telecommunications Corporation v. U S West Communications, Inc., et al., (Memorandum Opinion and Order), 15 FCC Rcd. 9328, ¶ 9).

<sup>5</sup> MCI Telecommunications Corporation v. U S West Communications, Inc., et al., (Memorandum Opinion and Order), 15 FCC Rcd. 9328, ¶ 8

<sup>6</sup> Id., ¶ 9.

<sup>7</sup> 47 U.S.C. § 271.

imposing "a PIC-change charge greater than the cost of providing this service."<sup>8</sup> Over a year ago, the Commission suggested that, "[i]t may well be that the policies reflected in the *1984 Access Charge Order* and the *1987 Access Tariff Order* are no longer appropriate in light of changes in the industry since that time."<sup>9</sup> Given the increasing number of states in which Section 271 authority has been granted to incumbent LECs since that time, and the clear danger of an incumbent LEC "price squeeze" should above-costs PICCs continue to be permitted by the Commission, ASCENT contends that no uncertainty on the issue exists. The policies reflected in the 1984 Access Charge Order and the 1987 Access Tariff Order are not merely inappropriate, they are outright anticompetitive and in conflict with the public interest.

As CompTel points out, above-cost PICCs artificially inflate the costs of long distance for all consumers. Every time a carrier chooses to change long distance carriers, either the subscriber or the new carrier must pay the PICC imposed by the incumbent LEC. As an economic necessity, the newly-selected carrier has little choice but to reimburse the customer for any PICCs incurred as a result of the carrier switch. The absence of a cost-based PICC requirement ensures that incumbent LECs are obtaining a windfall equal to the portion of the PICC which is above the incumbent's actual costs. Those unnecessary costs must then be recovered by long distance carriers through their overall rate structures. This result is harmful enough to the public interest. A far greater competitive risk results when incumbent LECs impose such above-cost charges in states where they have been granted authority to provide in-region long distance service pursuant to Section 271.

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<sup>8</sup> MCI Telecommunications Corporation v. U S West Communications, Inc., et al., (Memorandum Opinion and Order), 15 FCC Rcd. 9328, footnote 30.

<sup>9</sup> Id., ¶ 14.

As CompTel observes, in a state where Section 271 authority has been granted, the incumbent will incur only the true economic cost of switching a customer to its long distance affiliate's service; all unaffiliated long distance providers, on the other hand, would continue to incur the much higher "ceiling" charge presently authorized by the Commission. Section 271 requires that incumbents must irreversibly open their local markets to competition before in-state long distance authority may be granted. It certainly cannot be considered consistent with the public interest to allow incumbents, once they have gained the ability to provide a combination of local and long distance services, to systematically disadvantage their long distance carrier competitors by means of the imposition of higher PICCs than they (or their associated interexchange carriers) must bear.

CompTel is also correct that the establishment of a cost-based recovery system for PICCs is consistent with the Commission's policy requiring nonrecurring charges to reflect only the "one-time expenses incurred".<sup>10</sup> Toward that end, ASCENT supports CompTel's request not only that the Commission adopt a cost-based PICC mechanism applicable to incumbent LECs, but also that incumbent LECs be directed to file revised tariffs incorporating this cost-based recovery mechanism on an expedited basis in order to eliminate the existing "price squeeze" facing long distance carrier competitors in states where Section 271 authority has been granted. As noted above, elimination of above-cost PICCs on an expedited basis will enure to the benefit

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<sup>10</sup> Investigation of Interstate Access Tariff Non-Recurring Charges (Memorandum Opinion and Order), 2 FCC Rcd. 3498, 3501 (1987); See also, Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region, InterLATA Services in Michigan (Memorandum Opinion and Order), 12 FCC Rcd. 20549, ¶ 296 ("Unreasonably high non-recurring charges . . . can have as much of a chilling effect . . . as unreasonably high recurring fees. Both types of charges must be cost-based in order for [] competition to take root and flourish.")

of all telecommunications consumers by minimizing unnecessary costs which must presently be spread over a carrier's entire customer base.

In order to facilitate the rapid implementation of a cost-based PICC recovery mechanism, ASCENT would not object to a procedure pursuant to which the revised tariffs of incumbent LECs seeking to modify tariffs to reflect PICCs at or below the \$1.49 level presently imposed by BellSouth would be presumed lawful. While a detailed cost analysis would be preferable, the process would inevitably devolve to a protracted review of cost support to ensure that only charges directly attributable to PIC changes would be taken into account by the incumbent LEC in setting the cost-based PICC.<sup>11</sup>

By reason of the foregoing, the Association of Communications Enterprises urges the Commission to initiate the rulemaking sought by CompTel for the purpose of initiating a

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<sup>11</sup> ASCENT also agrees with CompTel that customer-service expenses are not one-time expenses incurred in the switching of a long distance service provider by the incumbent LEC. Indeed, in many instances, no customer service costs will be involved in a PIC change inasmuch as the process is fully automated, requiring no personnel involvement at all. Customer service costs, then, have no place in the PICC cost calculation.

cost-based recovery mechanism for the imposition of PICCs by incumbent LECs, and to direct incumbent LECs to file tariffs reflecting cost-based PICCs no later than January 1, 2002.

Respectfully submitted,

**ASSOCIATION OF COMMUNICATIONS  
ENTERPRISES**

By: Catherine M. Hannan  
Charles C. Hunter  
Catherine M. Hannan  
HUNTER COMMUNICATIONS LAW GROUP  
1424 Sixteenth Street, N.W., Suite 105  
Washington, D.C. 20036  
(202) 293-2500

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Its Attorneys